

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

STATE OF INDIANA,

Plaintiff,

v.

SENIOR CITIZENS REMODELING, INC.,

SENIOR CITIZENS REMODELING OF
INDIANA, INC.,

HARVEY JACK WALLER,

ROBERT OLSON, SR.,

ROBERT OLSON, JR.,

SENIOR INCOME REVERSE MORTGAGE
CORPORATION,

STEVE BAER,

JEFF HOSTETTER,

COMMUNITY ACTION INCORPORATED, and

CINDY ZEIGLER BOBOLTZ,

Defendants.

1 P 99-0853 C - Y / S

COMPLAINT FOR INJUNCTION
RESTITUTION, DAMAGES,
PUNITIVE DAMAGES AND
CIVIL PENALTIES

JURY TRIAL DEMANDED

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
99 JUN -9 AM 8:29
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

I. INTRODUCTION

1. Plaintiff, State of Indiana (State) brings this action under 42 U.S.C. §1981, 42 U.S.C. §1982, 42 U.S.C. §1985 to secure a permanent injunction and other equitable relief, including restitution, and for actual damages, punitive damages and all other appropriate relief for Defendants' violations of the civil rights of Indiana residents.

2. Plaintiff, State of Indiana, as a part of the same case and controversy, brings this action pursuant to the Indiana Home Improvements Contracts Act, Ind. Code §24-5-11-1 *et seq.*, the Indiana Home Solicitations Sales Act, Ind. Code §24-5-10-1 *et seq.*, and the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 *et seq.*

3. The intent of the Indiana Deceptive Consumer Sales Act (DCSA) Ind. Code §24-5-0.5-1 *et seq.*, is to protect consumers from deceptive and unconscionable acts and encourage the development of fair consumer sales practices. It is to be liberally construed to accomplish that end.

4. The Indiana Home Improvement Contracts Act (HICA), Ind. Code §24-5-11-1 *et seq.*, requires the preparation of written home improvement contracts prior to the provision of home improvement services to consumers. HICA also imposes minimum content standards for every home improvement contract.

5. The Indiana Home Solicitation Sales Act (HSSA), Ind. Code §24-5-10-1 *et seq.*, provides consumers a three day right of cancellation for consumer transactions consummated at a place other than the seller or supplier's place of business. The HSSA further requires the notice of cancellation rights delivered to consumers comply with the Federal Trade Commission's Cooling Off Rule, 16 C.F.R. 1(a) and (b).

II. JURISDICTION

6. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§1331, 1337 and 1343. This Court has jurisdiction of all pendent state law claims pursuant to 28 U.S.C. §1367.

7. Venue in this district is proper under 28 U.S.C. §1391 in that this action is being brought in the Southern District of the State of Indiana which is where the Defendant corporations operated or did business, where individual Defendants reside or resided, where the predominant number of contracts were formed, and where this cause of action arises.

III. PARTIES

8. Defendant Senior Citizens Remodeling, Inc. (SCR), is an Illinois corporation with its principal place of business located at 2138 South 61st Court, Cicero, Illinois 60804.

9. Defendant Senior Citizens Remodeling, of Indiana, Inc. (SCRI), is an Indiana corporation and alter ego of Senior Citizens Remodeling, Inc. (hereinafter referred to collectively as "SCR"), with its principal place of business at all times relevant to this complaint in Indianapolis, Indiana.

10. Defendant Harvey Jack Waller (Waller) is an incorporator, owner and Secretary of SCR and SCRI. Individually, or in concert with others, he directs, controls and formulates the business practices of SCR, including the acts or practices alleged in this complaint. In addition, he personally engages in the practices described herein. His business address is 30 N. Lasalle Street, Suite 2040, Chicago, Illinois 60602.

11. Defendant Robert Olson, Sr. (Olson, Sr.), is an owner of SCR and SCRI. Individually, or in concert with others, he directs, controls and formulates the business practices of SCR, including the acts or practices alleged in this complaint. In addition, he personally engages in the practices described herein. His business address is the same as that of SCR.

12. Defendant Robert Olson, Jr. (Olson, Jr.), is an owner, incorporator and President of SCR and SCRI. Individually, or in concert with others, he directs, controls and formulates the business practices of SCR, including the acts or practices alleged in this complaint. In addition, he personally engages in the practices described herein. His business address is the same as that of SCR. His residential address is 2138 South 61st Court, Cicero, Illinois 60804.

13. Defendant Senior Income Reverse Mortgage Corporation (SIRMCO) is an Illinois corporation doing business in Indiana, with its principal place of business located at 125 South Wacker Drive, Chicago, Illinois.

14. Defendant Steve Baer (Baer) is the president of SIRMCO. Individually, or in concert with others, he directs, controls and formulates the business practices of SIRMCO, including the acts or practices alleged in this complaint. In addition, he personally engages in the practices described herein.

15. Defendant Jeff Hostetter (Hostetter) was an employee of SIRMCO at all times relevant to this complaint. Individually, or in concert with others he directed, and formulated the business practices of SIRMCO, SCR and SCRI, including the acts or practices alleged in this complaint. In addition, he personally engaged in the practices alleged in this complaint.

16. Community Action, Inc. of Rock and Walworth Counties (hereinafter Community Action), is a Wisconsin corporation. At all relevant times, Community Action's business addresses were 2300 Kellogg Avenue, Janesville, Wisconsin 53546 and 1545 Hobbs Drive, Delavan, Wisconsin 53115.

17. Defendant Cindy Zeigler Boboltz (Zeigler) was employed as a community services specialist and certified Home Equity Conversion Mortgage (HECM) counseling agent

for Community Action at all times relevant to this complaint. Individually, or in concert with others, she directed and formulated the business practices for Community Action in providing HECM counseling, including the acts or practices alleged in this complaint. In addition, she personally engaged in the practices described herein. Her business address was the same as that of Community Action.

IV. FACTS

18. Since at least May 17, 1997, SCR has engaged in the business of soliciting and selling home improvements, including but not limited to residential remodeling and repair work.

19. Beginning on or around May, 1997, SCR advertised its services as a home improvement services provider by use of telephone solicitations to Indiana homeowners.

20. Representatives from SCR obtained the telephone numbers of each consumer by means of specialized phone lists which were used to target minority, elderly Indiana homeowners.

21. During the telephone solicitations SCR knowingly and intentionally solicited Indiana homeowners to enter into home improvement contracts with the Defendant SCR for the purchase and completion of residential home improvements.

22. SCR made initial sales contact with consumers through telemarketing calls, soliciting personal appointments with homeowners for the sale of home improvement services to be financed by a reverse mortgage on the consumer's home.

23. If a consumer was receptive to the initial telemarketing phone call, SCR scheduled appointments with the homeowner in their home. At these meetings, SCR's sales

representatives performed a walk through inspection of the homeowner's residence to find out what home improvements might be needed and what home improvements the homeowner(s) desired. SCR's sales representatives also presented a partial explanation of how the homeowner might have home improvements performed by SCR, with the home improvements to be paid for by the proceeds of a reverse mortgage of the consumer's home. During the initial visit to the homeowner's residence SCR made representations expressly or by implication and led homeowners to believe:

- (a) the homeowner needed home improvements and repair to their homes;
- (b) SCR could only be used to perform the home improvement if homeowners' were going to be able to get government money to complete the home improvement;
- (c) the contracts which the consumers entered into with SCR were in accordance with the Indiana Home Improvements Contracts Act; and
- (d) SCR would complete all repairs which the homeowner requested within a reasonable amount of time according to the homeowners specifications.

24. SCR's salespersons were not home improvement contractors and had no training or skill in the home improvement services field.

25. Using a standard price sheet, SCR prepared a home improvement contract at the time of the initial home solicitation. A true and accurate copy of the price sheet is attached hereto and incorporated by reference as Exhibit 1.

26. At least since August 6, 1997, SCR entered into home improvement contracts with Indiana consumers, including but not limited to the following:

equity conversion mortgage; other home equity conversion options; the financial implications of entering into a home equity conversion mortgage and, a disclosure that a home equity conversion mortgage may have tax consequences, affect eligibility for assistance under Federal and State programs, and have an impact on the estate and heirs of the homeowner.

34. Upon completion of counseling, the counseling agency must issue a certificate to the borrower certifying that the borrower has received the counseling. The borrower must submit this certificate to the lender for submission to HUD as part of the lender's application for mortgage insurance.

35. Pursuant to the National Housing Act, 12 U.S.C. §1715Z(e)(1) and HUD Directive 4234.1 REV-1, 2-3(A), SIRMCO was obligated to provide each homeowner with a list of telephone numbers and addresses of certified HUD counseling agents within the homeowner's city of residence.

36. On or about the date of homeowners' reverse mortgage application, SIRMCO, through Hostetter or other SIRMCO employees, agents or representatives, represented to consumers identified in paragraph 26, that the mandatory HECM counseling must be provided by a particular counselor, in most cases Defendant Community Action and Zeigler. In many instances, Hostetter telephoned Zeigler from the homeowner's residence and requested on-the-spot counseling and when not viable, would set an appointment for later telephone counseling with Zeigler.

37. At least since February 3, 1994, Community Action has been a HUD approved comprehensive housing counseling agency and has regularly engaged in or provided HECM counseling to prospective borrowers.

38. In its application for HUD approval as a comprehensive housing counseling agency, Community Action identified its target service areas by zip code. The zip codes identified in Community Action's application were Wisconsin zip codes for Rock and Walworth counties.

39. At all relevant times alleged herein, neither Community Action nor Zeigler were authorized by HUD to provide HECM counseling within the State of Indiana.

40. Prior to February 3, 1994, Zeigler received HECM training from the American Association of Retired Persons. Zeigler received this training as part of her employment with Community Action.

41. At all relevant times, Zeigler was the only employee of Community Action authorized to provide HECM counseling.

42. At all relevant times, Zeigler was Community Action's keeper of HECM counseling records.

43. Zeigler provided HECM counseling by telephone to the following Indiana consumers on the identified dates:

<u>Consumer</u>	<u>Counseling date</u>	<u>Duration of Telephone Counseling</u>
Fred Triplett	10/02/97	12 minutes
Leona Ewing	02/02/98	18 minutes
Clara Austin	10/06/97	19 minutes
Aline Callahan	09/18/97	14 minutes
Florence Gordon	09/19/97	11 minutes
Altermease Gant	09/25/97	9 minutes
Russell French	10/03/97	10 minutes

Lucinda Carson	08/20/97	13 minutes
Reatha Carneygee	11/10/97	11 minutes
Dorothy Dudley	08/06/97	11 minutes
Alma Burrell	03-10-98	13 minutes
Annie Key	06/12/97	10 minutes
Mignon Jordon	10/14/97	15 minutes
Rutha Powell	09/11/97	15 minutes
Emma Witlock	10/08/97	16 minutes
Roger Patterson	10/29/97	0 minutes
Mary Payton	11/18/97	0 minutes
Anna Mae Paine	10/13/97	2 minutes
James Perkins, Sr.	10/01/97	15 minutes
Roosevelt Ruffin	08/21/97	13 minutes
Lillian Simmons	09/03/97	18 minutes
Gurnice Stephens	10/01/97	9 minutes
Lucille Murray	11/10/97	11 minutes
Eugene Myers	10/30/97	10 minutes

44. On October 31, 1997, the Director of HUD's Indiana Office, Single Family Housing Division, notified Community Action Inc. and Zeigler to discontinue its HECM counseling program in the Indiana. Attached is a true and accurate copy of the October 31, 1997, correspondence marked as Exhibit 79.

45. Community Action and Zeigler continued to provide HECM counseling to Indiana consumers after October 31, 1997.

46. For each Indiana consumer counseled, Zeigler prepared and maintained a Housing Counseling Activity and Log Sheet, HUD form-9921. Attached is a true and accurate copy of the Housing Counseling Activity and Log Sheet, Hud form-9221 marked as Exhibit 80.

47. The public reporting burden for collection of information on the HUD form-9921, is estimated to average 0.25 hours per person. See Exhibit 80.

48. For each counseled consumer identified in paragraph 43, Zeigler represented on the Housing Counseling Activity and Unit Log, that she provided exactly 30 minutes of counseling.

49. In truth and in fact, Zeigler counseled each consumer identified in paragraph 43, an average of 11.5 minutes.

50. In truth and in fact, Zeigler may have failed to counsel some of the consumers identified in paragraph 43.

51. 11.5 minutes is insufficient time in which to provide HECM counseling as mandated by the National Housing Act.

52. Zeigler completed a "certificate of borrower counseling" (certificate), for each consumer identified in paragraph 43. Attached is a true and accurate copy of the certificate of borrower counseling, marked as Exhibit 81.

53. Zeigler signed each certificate representing or certifying that the consumer received mandatory HECM counseling as required by law.

54. Upon completion of the certificate, Zeigler provided a copy to the consumer and to SIRMCO.

55. SIRMCO arranged for a HUD approved appraiser to conduct an appraisal of the homeowner's home.

56. In some cases, SIRMCO arranged for the appraisals to be conducted prior to the homeowners' receiving counseling or prior to SIRMCO's receipt of the signed counseling certificate from the homeowner.

57. As a part of the appraisal, the appraiser completed a Valuation Condition (VC) Report, identifying all repairs required to bring the property into compliance for a HUD insured reverse mortgage loan.

58. After the real estate appraisal was performed, the homeowner was presented with a second home improvement contract prepared by SCR which purported to require additional home improvements, required by HUD regulations, to bring the home into compliance for HUD approval of the reverse mortgage loan.

59. Under the direction of Defendant SIRMCO, Defendant SCR also drafted additional contracts with the consumers to have SCR perform HUD VC work. Without the approval or signature of the homeowner, SCR representatives executed home improvement contracts for repairs to the residence of each homeowner. Though HUD regulations require each homeowner to have their home inspected and brought up to HUD VC standards, SCR and SIRMCO never informed homeowners that additional work was required to comply with HUD regulations prior to closing. SCR drafted the home improvement contracts to perform HUD VC work in the same form as all other contracts SCR executed and never obtained authorization

from the homeowner. SCR never provided a copy of the home improvement contract to perform the HUD VC work to the homeowners.

60. Following closing of the homeowners' HECM loans, SIRMCO submitted the closing documents to HUD for endorsement and certified to HUD that the mortgage had been closed in accordance with the statutory and regulatory requirements of the National Housing Act and HUD.

61. In truth and in fact, the homeowners' HECM loans had not been closed in accordance with the statutory and regulatory requirements of the National Housing Act and HUD, in that the mandatory counseling had not been provided to the homeowners in the manner prescribed by HUD regulations, and property appraisals had been ordered in some instances prior to the homeowners receiving the required counseling and/or prior to SIRMCO's receipt of the signed counseling certificate from the homeowner.

62. SIRMCO and SCR conducted business out of the same office space located at 2346 South Lynhurst Drive, Indianapolis, Indiana.

63. Senior Citizens Remodeling, Inc. transacted business in Indiana.

64. Senior Citizens Remodeling, Inc. failed to register as a foreign corporation with the Indiana Secretary of State.

65. Senior Citizens Remodeling, Inc. failed to obtain a certificate of authority to transact business in Indiana as required by Ind. Code §23-1-49-et seq.

66. In perpetuating the discriminatory acts which violate federal civil rights laws, Defendants committed wrongful acts which damaged other citizens of the State of Indiana.

V. IRREPARABLE INJURY

67. The Defendants' conduct complained of herein will cause irreparable injury unless Defendants are enjoined from engaging in further conduct in violation federal and state law.

COUNT I INDIANA HOME IMPROVEMENTS CONTRACTS ACT Ind. Code §24-5-11-1 et seq.

68. The Plaintiff realleges and incorporates by reference the material allegations contained in Paragraphs 1 through 67 above.

69. The transactions referred to in paragraph 26 above are "home improvement contracts" as defined by Ind. Code §24-5-11-4.

70. Defendants SCR, Olson Sr., and Olson Jr., are "home improvement suppliers" as defined by Ind. Code §24-5-11-6.

71. Defendants SCR, Olson Sr., and Olson Jr., failed to provide completed home improvement contracts to each consumer identified in paragraph 26 before the home improvement contract was signed by the consumer.

72. Defendants SCR, Olson Sr., and Olson Jr., failed to include the some of or all of the following information, required by the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-1 *et seq.* in each home improvement contract identified as Exhibit 2a. through 78b:

(a) the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(b) the date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(c) specifications for the home improvement or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(d) the approximate starting and completion dates of the home improvement;

(e) a statement of any contingencies that would materially change the approximate completion date;

(f) a detailed description of the proposed home improvements;

(g) signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or a typed version of that person's name placed directly after or below the signature; and

(h) the home improvement contract price.

73. By failing to provide completed home improvement contracts to consumers before the contracts were signed by the consumers, Defendants SCR, Olson Sr., and Olson Jr., violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

74. By failing to include the information referred to in paragraph 72 above in the home improvement contracts entered into with the consumers, Defendants SCR, Olson Sr., and Olson Jr., violated the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-10.

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants SCR, Olson Sr., and Olson Jr., for a permanent injunction enjoining Defendants from:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a completed home improvement contract which includes at a minimum the following:

(1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

(2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;

(3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

(4) A reasonably detailed description of the proposed home improvements;

(5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

(6) The approximate starting and completion date of the home improvements;

(7) A statement of any contingencies that would materially change the approximate completion date;

(8) The home improvement contract price; and

(9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

c. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of the home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment; and

d. in the course of entering into home improvement transactions, failing to provide a fully executed copy of the home improvement contract, including the dates the supplier and each consumer executed the contract, to the consumer immediately after the consumer signs it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants SCR, Olson Sr., and Olson Jr., for the following relief:

- a. cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);
- b. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2) in an amount to be determined at trial;
- c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action; and
- d. all other proper relief.

COUNT II
INDIANA DECEPTIVE CONSUMER SALES ACT
Ind. Code §24-5-0.5-1 et seq.

75. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 74 above.

a. SCR

76. The transactions referred to in paragraph 26 above are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(a)(1).

77. Defendants SCR, Olson Sr., and Olson Jr., are "suppliers" as defined by Ind. Code §24-5-0.5-2(a)(3).

78. The violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 68 through 74 constitute deceptive acts.

79. On or about September 18, 1998, Defendants SCR, Olson Sr., and Olson Jr., entered into a home improvement contract with consumers Rudolph and Wanda Roberts.

80. Defendants received payment for all home improvement services contracted for.

81. Defendants explicitly represented they would perform the work contracted for.

82. Defendants did not perform any of the work contracted for.

83. On or about February 24, 1998, Defendants SCR, Olson Sr., and Olson Jr., entered into a home improvement contract with consumer Nevoleane Ridley.

84. Defendants received payment for all home improvement services contracted for.

85. Defendants explicitly represented they would perform the work contracted for.

86. Defendants did not perform any of the work contracted for.

87. On or about September 18, 1998, Defendants SCR, Olson Sr., and Olson Jr., entered into a home improvement contract with consumer Dorothy Bradley.

88. Defendants received payment for all home improvement services contracted for.

89. Defendants explicitly represented they would perform the work contracted for.

90. Defendants did not complete the work contracted for.

91. On or about September 18, 1998, Defendants SCR, Olson Sr., and Olson Jr., entered into a home improvement contract with consumer Rosetta Taylor.

92. Defendants received payment for all home improvement services contracted for.

93. Defendants explicitly represented they would perform the work contracted for.

94. Defendants did not perform any of the work contracted for.

95. On or about May 28, Defendants SCR, Olson Sr., and Olson Jr., entered into a home improvement contract with consumer Estelle Scott.

96. Defendants received payment for all home improvement services contracted for.

97. Defendants explicitly represented they would perform the work contracted for.

98. Defendants did not perform any of the work contracted for.

99. Defendants' representations to Rudolph and Wanda Roberts that they would perform home improvement services for which they had been paid as set forth in paragraph 81 above violated Indiana's Deceptive Consumer Sales Act by representing that the Defendants could complete the home improvements, when Defendants knew or reasonably should have known they could not, in violation of Ind. Code §24-5-0.5-3(a)(10).

100. Defendants' representations to Nevoleane Ridley that they would perform home improvement services for which they had been paid as set forth in paragraph 85 above violated Indiana's Deceptive Consumer Sales Act by representing that the Defendants could complete the home improvements, when Defendants knew or reasonably should have known they could not, in violation of Ind. Code §24-5-0.5-3(a)(10).

101. Defendants' representations to Dorothy Bradley that they would perform home improvement services for which they had been paid as set forth in paragraph 89 above violated

Indiana's Deceptive Consumer Sales Act by representing that the Defendants could complete the home improvements, when Defendants knew or reasonably should have known they could not, in violation of Ind. Code §24-5-0.5-3(a)(10).

102. Defendants' representations to Rosetta Taylor that they would perform home improvement services for which they had been paid as set forth in paragraph 93 above violated Indiana's Deceptive Consumer Sales Act by representing that the Defendants could complete the home improvements, when Defendants knew or reasonably should have known they could not, in violation of Ind. Code §24-5-0.5-3(a)(10).

103. Defendants' representations to Estelle Scott that they would perform home improvement services for which they had been paid as set forth in paragraph 97 above violated Indiana's Deceptive Consumer Sales Act by representing that the Defendants could complete the home improvements, when Defendants knew or reasonably should have known they could not, in violation of Ind. Code §24-5-0.5-3(a)(10).

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants SCR, Olson Sr., and Olson Jr., for a permanent injunction enjoining Defendants from:

a. representing that Defendants are able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when Defendants know or should reasonably know they cannot; and

b. representing that a home improvement has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which Defendants know or should reasonably know it does not have.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants SCR, Olson Sr., and Olson Jr., for the following relief:

- a. cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);
- b. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2) in an amount to be determined at trial;
- c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action; and
- d. all other proper relief.

b. SIRMCO and HOSTETTER

104. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 103 above.

105. SIRMCO and Hostetter are “suppliers” as defined by Ind. Code §24-5-0.5-2(3)(a).

106. The HECM loans provided to Indiana consumers by SIRMCO are “consumer transactions” as defined by Ind. Code §24-5-0.5-2(1).

107. By representing to Indiana consumers that HECM counseling was required to be provided by a particular counselor, in most cases Defendants Community Action and Zeigler, when they knew or should have known that counseling could be provided by any HUD-approved counselor in the consumers’ area, Defendants SIRMCO and Hostetter misrepresented the characteristics of a consumer transaction, in violation of Ind. Code §24-5-0.5-3(a)(1).

108. By certifying to HUD that the consumers’ mortgages had been closed in accordance with the statutory and regulatory requirements of the National Housing Act and HUD

when it knew or should have known that such requirements had not been followed, Defendant SIRMCO misrepresented the performance, characteristics, or benefits of a consumer transaction, in violation of Ind. Code §24-5-0.5-3(a)(1).

WHEREFORE, the Plaintiff, State of Indiana, requests the Court permanently enjoin Defendants SIRMCO and Jeff Hostetter from:

- a. representing, directly or by implication, that HECM counseling must be provided by a particular counselor; and
- b. representing to HUD that consumers' HECM loans have been closed in accordance with the statutory and regulatory requirements of the National Housing Act and HUD when such was not the case.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants SIRMCO and Hostetter for the following relief:

- a. cancellation of contracts pursuant to Ind. Code §24-5-0.5-4(d);
- b. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2) in an amount to be determined at trial;
- c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action; and
- d. all other proper relief.

c. COMMUNITY ACTION and ZEIGLER

109. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 108 above.

110. Community Action and Zeigler are “suppliers” as defined by Ind. Code § 24-5-0.5-2(3).

111. The HECM counseling services provided by Community Action via Zeigler, as referenced in paragraph 43 above, are consumer transactions as contemplated by Ind. Code §24-5-0.5-2(1).

112. Community Action and Zeigler’s representation on the certificates of counseling that consumers received counseling as required by law:

- a. misrepresents sponsorship or approval of HECM counseling services in violation of Ind. Code §24-5-0.5-3(a)(1), and
- b. misrepresents Community Action and Zeigler’s sponsorship, approval or affiliation as a HUD-approved counseling agency authorized to provide HECM counseling to Indiana consumers, in violation of Ind. Code §24-5-0.5-3(a)(7).

113. Community Action and Zeigler’s representation on the certificates of counseling that consumers received counseling as required by law:

- a. misrepresents sponsorship or approval of HECM counseling services in violation of Ind. Code §24-5-0.5-3(a)(1), and
- b. misrepresents Community Action and Zeigler’s sponsorship, approval or affiliation as a HUD approved counseling agency authorized to provide HECM counseling to Indiana consumers, in violation of Ind. Code §24-5-0.5-3(a)(7).

114. Community Action and Zeigler's representation on each Housing Counseling Activity and Unit Log, that each consumer received exactly 30 minutes of counseling misrepresents the characteristics or benefits of HECM counseling services, in violation of Ind. Code §24-5-0.5-3(a)(1).

115. Community Action and Zeigler's providing HECM counseling to Indiana consumer when they knew or should have known they were not authorized to provide counseling within the State:

- a. misrepresents sponsorship or approval of HECM counseling services in violation of Ind. Code §24-5-0.5-3(a)(1), and
- b. misrepresents Community Action and Zeigler's sponsorship, approval or affiliation as a HUD approved counseling agency authorized to provide HECM counseling to Indiana consumers, in violation of Ind. Code §24-5-0.5-3(a)(7).

WHEREFORE, Plaintiff, State of Indiana, requests the Court to enter judgment against Community Action, Inc. and Cindy Zeigler as follows:

- a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining Defendants, their agents, representatives, employees, successors, and assigns, from engaging in the conduct alleged herein as violations of Ind. Code §24-5-0.5-1 *et seq.*;
- b. Consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), in an amount to be determined at trial;

- c. Costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. All other proper relief.

COUNT III
KNOWING AND INTENTIONAL VIOLATIONS OF THE
THE DECEPTIVE CONSUMER SALES ACT
Ind. Code §§ 24-5-0.5-4(g) and 24-5-0.5-8

116. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 115 above.

117. The misrepresentations and deceptive acts set forth above were committed by the Defendants with knowledge and intent to deceive.

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants as follows:

- a. civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana;
- b. civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act in the amount of five hundred dollars (\$500.00) per violation, payable to the State of Indiana.
- c. all other proper relief.

COUNT IV
INDIANA HOME SOLICITATION SALES ACT
Ind. Code §24-5-10-1 et seq.

118. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 117 above.

119. Defendants SCR, Olson Sr., and Olson Jr., are sellers of home improvement services who solicit the sale of home improvement services to consumers.

120. Defendants initially contacted consumers identified in paragraph 26 above by telephone solicitations.

121. Subsequent to the initial telemarketing telephone call, Defendants conducted a direct solicitation for the sale of home improvement services at the home of the consumer(s).

122. Defendants did not provide the consumer with two copies of a written notice of the consumer's right to cancel meeting the minimum requirements of 16 C.F.R. 429.1 (a) and (b); in violation of Ind. Code 24-5-10-9.

123. Pursuant to Ind. Code 24-5-10-18, Defendants' failure to give required notices of cancellation is a deceptive act, subject to the remedies and penalties of Ind. Code §24-5-0.5-4.

WHEREFORE, the Plaintiff, State of Indiana, requests that the Court enter judgment against Defendants SCR, Olson Sr., and Olson Jr., as follows:

- a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining the Defendants, their agents, representatives, employees, successors, and assigns, from engaging in conduct in violation of Ind. Code § 24-5-0.5-1 et seq.;

- b. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), requiring Defendants to provide the consumers identified in paragraph 26 above with a notice of cancellation meeting the minimum requirements of 16 C.F.R. 429.1(a) and (b);
- b. Cancellation of all contracts pursuant to Ind. Code § 24-5-0.5-4(d);
- c. Consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2) in an amount to be determined at trial;
- d. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- g. All other proper relief.

COUNT V
INDIANA BUSINESS CORPORATIONS LAW
Ind. Code §23-1-49-1 et seq.

124. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 123 above.

125. Defendants SCR, Olson Sr., and Olson Jr., maintained offices in Indiana at Merrillville, Indiana, and Indianapolis, Indiana.

126. SCR, Olson Sr., and Olson Jr., employed salesmen and telemarketers and clerical staff in their Indiana offices.

127. SCR, Olson Sr., and Olson Jr., prepared and executed home improvement contracts with Indiana consumers.

128. SCR, an Illinois corporation, failed to obtain a certificate of authority to transact business in Indiana as required by Ind. Code §23-1-49-1.

129. SCR transacted business in Indiana at all times relevant to this complaint.

130. SCR, Olson Sr., and Olson Jr., are liable for a civil penalty for transacting business in Indiana without first obtaining a certificate of authority.

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendants SCR, Olson Sr., and Olson Jr., as follows:

- a. order a civil penalty of ten thousand dollars (\$10,000.00) against the Defendant, SCR, Olson Sr., and Olson Jr., pursuant to Ind. Code §23-1-49-2(d); and
- b. All other proper relief.

COUNT VI
42 U.S.C. §1985

131. The State realleges and incorporates by reference the material allegations contained in Paragraphs 1 through 130 above.

132. Defendants SCR and SCRI, by Defendant Waller, acted in concert with Defendant SIRMCO, by Defendant Baer, to knowingly and intentionally target "needy ... urban, minority" homeowners in the State of Indiana. The stated purpose of their business relationship was to induce "needy ... urban, minority" homeowners to use a SIRMCO reverse mortgage to finance home improvements to be provided through SCR. Attached is a true and accurate copy of the June 1, 1997, letter from Harvey Jack Waller to Steven Baer, attached as Exhibit 82.

133. Defendants SCR and SCRI, by Defendants Olson, Sr., and/or Olson, Jr., and Defendant SIRMCO by Defendant Baer acted in concert with Defendant Hostetter to open and

operate an office in the State of Indiana for the purpose of inducing minority homeowners to use a SIRMCO reverse mortgage to finance home improvements to be provided through SCR.

134. Defendant Community Action by Defendant Zeigler acted in concert with Defendant SIRMCO by Defendant Hostetter, and/or Defendant SCR by Defendant Hostetter, to induce minority homeowners to use a SIRMCO reverse mortgage to finance home improvements to be provided through SCR.

135. This discriminatory conduct was intentional and motivated by race insofar as Defendants intended to target "needy ... urban, minority" homeowners and to induce them to form contracts which violate the law as described herein. See Exhibit 82.

136. Defendants' intentional, unlawful conduct based upon race has violated the rights of the affected citizens of the State of Indiana as those rights are protected by 42 U.S.C. §1985.

137. In perpetuating the discriminatory acts which violate 42 U.S.C. §1985, Defendants committed wrongful acts which damaged other citizens of the State of Indiana and impacted the well-being of the State's citizens, agencies and businesses.

WHEREFORE, Plaintiff requests judgment in its favor for the discriminatory violations of 42 U.S.C. §1985, and asks the Court to grant the following relief:

- (a) Award monetary damages sufficient to fairly compensate all injured citizens for pecuniary losses, non-pecuniary injuries and injuries to their rights under the law;
- (b) Enjoin Defendants from further acts of discrimination in the State of Indiana and against the citizens of Indiana;
- (c) Set a date for a trial of this matter by jury;

- (d) Award attorney fees, litigation expenses, and costs as allowed by law;
- (e) Award punitive damages;
- (f) Award all other appropriate relief.

COUNT VII
42 U.S.C. §1982

138. The State realleges and incorporates by reference the material allegations contained in Paragraphs 1 through 137 above.

139. Defendants' intentional, willful, unlawful conduct based upon race has violated the rights of the targeted homeowner citizens of the State of Indiana as those rights are protected by 42 U.S.C. §1982.

140. This discriminatory conduct was intentional and motivated by race insofar as Defendants intended to target "needy ... urban, minority" homeowners and to induce them to form contracts which violate the law as described herein. See Exhibit 82.

141. In perpetuating the discriminatory acts which violate 42 U.S.C. §1982, Defendants committed wrongful acts which damaged other citizens of the State of Indiana and impacted the well-being of the State's citizens, agencies and businesses.

WHEREFORE, Plaintiff requests judgment in its favor for the discriminatory violations of 42 U.S.C. §1982, and asks the Court to grant the following relief:

- (a) Award monetary damages sufficient to fairly compensate all injured citizens for pecuniary losses, non-pecuniary injuries and injuries to their rights under the law;

(b) Enjoin Defendants from further acts of discrimination in the State of Indiana and against the citizens of Indiana;

(c) Set a date for a trial of this matter by jury;

(d) Award attorney fees, litigation expenses, and costs as allowed by law;

(e) Award punitive damages;

(f) Award all other appropriate relief.

COUNT VIII
42 U.S.C. §1981

142. The State realleges and incorporates by reference the material allegations contained in Paragraphs 1 through 141 above.

143. Defendants' intentional, willful, unlawful conduct based upon race has violated the rights of the affected citizens of the State of Indiana as those rights are protected by 42 U.S.C. §1981.

144. This discriminatory conduct was intentional and motivated by race insofar as Defendants intended to target "needy ... urban, minority" homeowners and to induce them to form contracts which violate the law as described herein. See Exhibit 82.

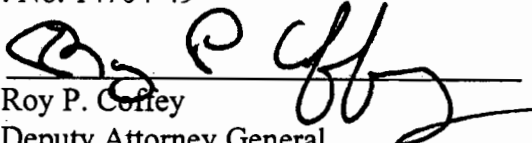
145. In perpetuating the discriminatory acts which violate 42 U.S.C. §1981, Defendants committed wrongful acts which damaged other citizens of the State of Indiana and impacted the well-being of the State's citizens, agencies and businesses.

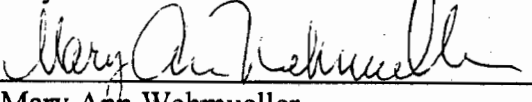
WHEREFORE, Plaintiff requests judgment in its favor for the discriminatory violations of 42 U.S.C. §1981, and asks the Court to grant the following relief:

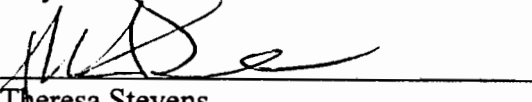
- (a) Award monetary damages sufficient to fairly compensate all injured citizens for pecuniary losses, non-pecuniary injuries and injuries to their rights under the law;
- (b) Enjoin Defendants from further acts of discrimination in the State of Indiana and against the citizens of Indiana;
- (c) Set a date for a trial of this matter by jury;
- (d) Award attorney fees, litigation expenses, and costs as allowed by law;
- (e) Award punitive damages;
- (f) Award all other appropriate relief.

Respectfully Submitted,

JEFFREY A. MODISSETT
Attorney General of Indiana
Atty. No. 14704-49

By: 
Roy P. Coffey
Deputy Attorney General
Atty. No. 3930-29

By: 
Mary Ann Wehmuller
Deputy Attorney General
Atty. No. 15251-49A

By: 
Theresa Stevens
Deputy Attorney General
Atty No. 17569-49

OFFICE OF THE ATTORNEY GENERAL
Indiana Government Center South, Fifth Floor
402 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-6229

EXHIBIT 1:

SCR PRICE SHEET

S.C.R.
Price List

Exterior

<u>Windows</u>	\$900.00 each
Double Hung/ Sliders/ Picture/ Glassblock	\$4200.00 each
Garden(Kitchen)/Bay	
<u>Doors</u>	\$900.00 each
Steel Security	\$500.00 each
Exterior Solid Door	\$275.00 each
Interior Door	
<u>Vinyl Siding</u> (L X H divided by 100 = Sqs. for one wall)	\$650.00 per Sq
<u>Soffit/Fascia</u>	\$35.00 Lin. Ft.
<u>Gutters</u>	\$25.00 Lin. Ft.
<u>Roofs Shingles</u> (L X W X 2 divided by 100 = Sq.)	\$300.00 per Sq
Layover	\$550.00 per Sq
Tear-off (includes any bad wood)	
<u>Roofs Flat</u> (L X W divided by 100 = Sq.)	\$350.00 per Sq
Layover	\$800.00 per Sq
Tear- Off (includes any bad wood)	
<u>Fences</u>	\$30.00 Lin. Ft.
Chained	\$55.00 Lin. Ft.
Wood	\$110.00 Lin. Ft.
Iron	
<u>Tuckpointing</u> (L X H divided by 100 = Sqs. for one wall)	\$300.00 per Sq.
<u>Concrete</u> (L X W = Sq. Ft.)	\$14.00 Sq. Ft.
<u>Asphalt</u> (L X W = Sq. Ft.)	\$10.00 Sq. Ft.
<u>Woolmanized Porches & Decks</u>	\$70.00 Sq. Ft.
1 Level	
** Double price for each level, enclose porch see siding, add \$30.00 per sq. for new roof over porch.**	

EXHIBIT

1

Garage

One Car

\$10,500.00

Two Car

\$12,500.00

Dormers (L X W = Sq. Ft.) (Add \$8,000.00 for Bathroom)

\$110.00 Sq. Ft.

Additions (L x W = Sq. Ft.) (Add for kitchen and bathroom)

\$150.00 Sq. Ft.

Interior

Drowall/ Paneling (L X W = Sq. Ft.)

\$25.00 Sq. Ft.

Basements (L X W = Sq. Ft.) (Includes walls, floors
ceiling, electric, trim, doors.)

\$35.00 Sq. Ft.

Floors (L X W = Sq. Ft.)

Vinyl/Carpet

\$15.00 Sq. Ft.

Ceramic

\$25.00 Sq. Ft.

Kitchens (L X W = Sq. Ft.) (Includes cabinets, walls,
countertop, sink, floor, ceiling)

\$90.00 Sq. Ft.

New kitchen where no plumbing is EX: Basement

\$10,500.00

CABINETS ~~3,000.00~~ LINEN PT

Bathroom (Includes walls, tub, toilet, sink, floor, vanity)

\$8500.00

When plumbing does not exist EX: Basement

\$12,000.00

Furnaces

1 Story

\$6500.00

2 Story

\$10500.00

3 Story

\$14500.00

PAINTING \$16.00 SQ. FT.

AIR CONDITIONING \$5,000

Any questions when pricing a job call your office or page

Paul Lund

312-449-8585

Or

Bob Jr.

312-449-8601

Please put 911 after customer's number and we'll call you
right back.